

FOMBA BILITY, Appellant, v. **MARSAH SIRLEAF**, Appellee.
APPEAL FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL
CIRCUIT, BONG COUNTY.

Heard November 19, 1987. Decided February 25, 1988.

1. *Res judicata* is a principle of law which bars litigation of issues in a case involving the same parties and the same subject matter where the case has once before been judicially determined; this is to say, where the merits of the issues have been previously tried and judgment rendered thereon.
2. Under the doctrine of *stare decisis*, a deliberate and solemn decision of the court, made after argument on a question of law fairly arising in the case and necessary to its determination, is authority in subsequent cases where the very point is again in controversy.
3. Where a prior suit was not between the same parties and did not concern the same subject matter, a plea of *res judicata* will not be entertained.
4. The purpose of the appointment of an attorney by the court is to note exceptions to the ruling of the court on behalf of the absent party. Thus, the court's appointee is only required to except to the ruling of the court.
5. Where Rule 7 of the Circuit Court Rules has been invoked, it is error for the trial judge to appoint a lawyer to take the ruling on behalf of the absent party who was notified of the hearing but failed to appear.
6. Mere technicalities not affecting the substantial rights of the parties should not be allowed to defeat the ends of justice.
7. The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial shall file a motion for continuance setting forth therein the legal reasons why the case might not be heard at the particular term of court....A failure to file a motion for continuance or to appear for trial after returns by the sheriff of a written assignment shall be 'sufficient indication of the party's abandonment of a defense in the said case, in which instance the court may proceed to hear the plaintiff's side of the case and decide thereon or dismiss the case against the defendant and rule the plaintiff to cost according to the party failing to appear.

8. Special damages must be particularly alleged and affirmatively proved, whereas in the case of general damages, the amount awarded is exclusively within the province of the trial jury.

9. Where general damages are prayed for in the complaint, a trial judge is duty bound to charge the jury on that point.

10. The failure of the trial court to read the mandate of the Supreme Court before commencing the trial of the case, as mandated, is not a ground provided in the statute for a new trial.

11. In a complaint in an action of ejectment, the plaintiff may demand damages for wrongful detention of real property as well as delivery of possession.

12. Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such action may be brought when the title to the real property as well as the right to possession thereof is disputed.

Marsah Sirleaf, appellee herein, instituted in the Ninth Judicial Circuit, Bong County, an action of ejectment against the appellant. In his answer, the appellant had raised the issue of *res judicata*, contending that an action had been previously instituted and adjudicated by the Supreme Court, involving the same subject matter and the same parties, and that the appellee was therefore barred from bring the suit. Simultaneously with the filing of the answer, the appellant also filed a motion to dismiss.

At the call of the case for the disposition of the law issues, the trial court heard and denied the motion, disposed of the law issues in the pleadings, and ruled the case to trial. From the denial of the motion, the appellant petitioned the Justice in Chambers for a writ of certiorari. The petition was heard and denied, but no appeal was taken therefrom. Accordingly, a mandate was sent to the trial court to resume jurisdiction over the case and to proceed with the trial thereof.

In response to a notice which was duly issued and served, counsel for appellant wrote a letter to the court requesting the reassignment of the case to the following day. The request was granted by the Court. However, neither the appellant nor his counsel appeared in court for the trial of the case. Whereupon appellee's counsel invoked Rule 7 of the Circuit Court Rules and prayed for a judgment by default. The request

was granted by the court and the appellee was allowed to present evidence in support of the allegations laid in her complaint. Following the evidence, the jury returned a verdict of liable against the appellant. Whereupon counsel for appellant appeared, took exceptions to the verdict and filed a motion for a new trial. The motion was heard and denied and judgment was rendered confirming the verdict. An appeal was taken therefrom to the Supreme Court.

The Supreme Court affirmed the judgment of the trial court, holding that as to the evidence presented by the appellee, the same was sufficient to warrant the verdict returned by the jury, and that as the appellee had requested damages in her complaint, in addition to requesting that the appellant be evicted from the premises, the jury acted properly in awarding her special damages for the wrongful detention of the premises by the appellant. The Court rejected the contention that because the witnesses for the appellee had not mentioned the damages done to the appellee, she was therefore not entitled to general damages for the wrongful detention of the premises. The Court observed that the appellee had made mention of and demanded damages in both her complaint and in her testimony. The trial court did not err therefore in making mention of the damages in his charge in affirming the verdict adjudging the appellant liable in damages, and in denying the appellant's motion for a new trial, it said.

As to the contention of the appellant that the trial judge had erred in denying the appellant's motion to dismiss, the Supreme Court said that it found nothing in the records to substantiate the claim of the appellant that the matter had been adjudicated before, and that in any event, the issues had been taken to the Justice in Chambers on certiorari and resolved by the Justice without an appeal being taken to the full Bench. Therefore, the Court said that the trial judge correctly denied the motion to dismiss.

With regard to the arguments of the appellant that the trial court erred in appointing the County Attorney for Bong County to take the ruling of the court on the law issues, the Supreme Court said that the appointment of such lawyer did not prejudice the appellant's case as the said lawyer had noted the necessary exceptions on behalf of the appellant. The Court noted, however, that the trial court had erred in appointing a lawyer to take the ruling on behalf of the appellant as the appellant, having received a notice of assignment but had failed to attend the hearing, was not entitled to have counsel designated to take any ruling in its behalf.

In addition, the Court rejected the contention that the trial court should have sent out a special assignment for the reading of the Supreme Court's mandate prior to

commencing trial of the case, noting that it was sufficient that the court had noted the assignment on the records. Technicalities not affecting the rights of the parties, it said, would not be allowed to defeat the ends of justice.

Lastly, the Supreme Court rejected the contention that the trial court had moved with abnormal speed in the trial of the case, noting that the court had acted in conformity with the rules and procedure. The Court said that the trial court had provided every opportunity to the appellant, but that the appellant had failed to appear as per assignment. Under the circumstances, the Circuit Court Rules had been correctly invoked by the appellee and legally acted upon by the trial court. The Court therefore *affirmed* by judgment of the trial court.

G. Bona Sagbe appeared for appellant. *James D. Gordon* appeared for appellee.

MR. JUSTICE BELLEH delivered the opinion of the Court.

The appellee, Marsah Sirleaf, of the City of Gbarnga, Bong County, Liberia, instituted an action of ejectment in the Ninth Judicial Circuit Court, Bong County, against the appellant, Fomba Bility, for one town lot, situated on Barror Street, Gbarnga City, Bong County. In support of her claim, the appellee proferted a public land sale deed. She prayed that the trial court would evict, oust and eject the appellant from appellee's said one lot situated in the said City of Gbarnga, Bong County. The appellant, having been served with the writ of summons together with the copy of the appellee's complaint, filed a four-count answer on the 23rd day of May, A. D. 1983, in which answer he raised the issue of *res judicata* as a bar against appellee's action of ejectment. According to appellant's answer, the same action of ejectment had been adjudicated once by the Ninth Judicial Circuit, Bong County, and the Supreme Court of Liberia respectively. The answer asserted that the previous ejectment action involved the identical parties and subject matter.

The appellee then filed a reply in which she refuted the allegations in the answer by asserting that her one lot had never been the subject of litigation, and that therefore her case of ejectment could not fall under the principle of *res judicata*, especially so when the appellant did not present a complaint, an answer, a reply, or the ruling of the court in the alleged prior case of ejectment involving the same parties and touching the same subject matter.

On the 23rd day of February, A. D. 1984, during the February 1984 Term of the court, presided over by His Honour Varney D. Cooper, when the case was called for

disposition of the law issues, the appellant's counsel informed the court that he had filed a motion to dismiss the action of ejectment.

The law issues raised in the pleadings were then disposed of, the appellant's motion denied, and the case ruled to trial by jury. The appellant excepted to the ruling of the judge denying the motion to dismiss as well as the ruling for the disposition of the law issues, and petitioned the Chambers Justice for a writ of certiorari. The alternative writ was issued and served on the appellee. The Chambers Justice having heard the petition for certiorari, denied the same and quashed alternative writ. He ordered that a mandate be sent to the trial court to proceed with the trial of the case on its merits. No appeal was taken from this ruling of the Chambers Justice.

On November 21st, 1984, a notice of assignment was issued, served and returned served on both parties for the trial of the ejectment case on November 27, 1984 at 10:00 a.m. However, on the 27th of November, 1984, counsel for appellant wrote the court requesting for postponement of the trial until November 28, 1984 at the hour of 2:00 p. m. instead of 10:00 a.m. on November 27, 1984, as was previously scheduled. This request was granted by the trial judge and the trial consequently deferred to 2:00 p. m. on November 28, 1984.

According to the records certified to us, although the trial of the case was postponed to 2:00 p. m. on November 28, 1984, at the written request of Counsellor G. Bona Sagbe, counsel for the appellant, neither the appellant nor his counsel appeared for the hearing of the case as per his request. The trial judge waited until 4:00 p. m., but Counsellor Sagbe had still not arrived. Counsel for appellee then applied to the court for the trial of the case, invoking Rule 7 of the Circuit Court Rules as the basis therefor and citing the absence of the appellant and his counsel as the reason for the request. The request was granted and the sheriff was ordered to call the appellant three times at the door of the court room. This was done, and neither the appellant nor his counsel answered. The court then ordered the entry of a plea of not liable in favour of the appellant/defendant and a trial jury was empaneled to sit on the case and to determine the factual issues. The appellee was allowed to take the stand and to testify to prove her case. The appellee testified and produced two other witnesses, presented her deed which was testified to by her witnesses, and marked, confirmed and admitted into evidence by the court to form part of the records in the case.

When the appellee rested evidence, the empaneled jury was charged by court. The jury thereafter retired to their room of deliberation and returned a verdict in favour of appellee. Upon the return of the jury at about 4:45 p. m. Counsellor Sagbe appeared and excepted to the verdict of the jury. He later filed a motion for a new trial, which

was resisted, heard and denied. A final judgment was then rendered affirming and confirming the verdict of the empaneled jury. Appellant excepted to the final judgment and appealed to this Honourable Court for the review of the entire proceedings.

In furtherance of his appeal, the appellant filed a bill of exceptions containing 12 counts. In counts one, two and three of the bill of exceptions, appellant contended that His Honour Varney D. Cooper committed a reversible error when he ruled dismissing the entire motion of the defendant/appellant to dismiss the complaint, and further ruled out the defendant/ appellant's answer, all of which were based upon the principle of *res judicata* which the appellant had asserted because, according to him, the issue of ejection was once adjudicated by the Ninth Judicial Circuit Court and the Supreme Court of Liberia, respectively.

The issue presented therefore, is whether or not the principle of *res judicata* is applicable in this case.

"*Res judicata* is a principle of law which bars litigation of issues in a case involving the same parties and the same subject matter where the case has once before been judicially determined; that is to say, where the merits of the issues have been previously tried and judgment rendered thereon." *Kiazolu Wabab v. Sonni et. al.*, 16 LLR 73(1964).

A careful perusal of the records show that the issue of *res judicata*, which was the prime basis for the appellant's motion to dismiss, was denied by the court below and that the appellant's answer, based upon the same issue, was ruled out by the trial judge who disposed of both the motion to dismiss and law issues. The records also reveal that subsequently, the appellant petitioned the Chambers Justice for a writ of certiorari and that the chambers Justice, having heard the petition, denied the same and quashed the alternative writ; and that the Justice thereafter sent a mandate to the Ninth Judicial Circuit Court, Bong County to resume jurisdiction over the action of ejection and to proceed with the trial thereof. No appeal was taken from the ruling of the Chambers Justice.

According to the doctrine of *stare decisis*, a deliberate or solemn decision of court, made after argument on question of law fairly arising in the case and necessary to its determination is an authority or binding precedent in the same court or in lower courts in subsequent cases where the very point is again in controversy, BLACK'S LAW DICTIONARY 1577. On this issue, this Court has stated:

"Where a prior suit was not between the same parties and did not concern the same subject matter, a plea of *res judicata* will not be entertained." *Tweb v. Massaquoi et. al.*, 11 LLR 152 (1952).

Coming to the factual contentions raised by the appellant, we note firstly that there is no evidence in the records that an action of ejectment was ever litigated between the appellant and the appellee. Secondly, the issue of *res judicata* was settled by the Chamber Justice without an appeal being taken to the full Bench. Under these circumstances, the Court is of the opinion that the trial judge correctly denied appellant's motion to dismiss and ruled out appellant's answer. Counts one, two and three of the bill of exceptions are therefore not sustained.

In count four of the bill of exceptions, the appellant contends that the trial judge erred when he appointed F. A. Vampelt, County Attorney for Bong County, to take a ruling in a civil action where the Republic of Liberia is not a party. From the foregoing, the issue presented for our consideration is whether or not the interest of the appellant was prejudiced by virtue of the court's appointment of County Attorney F. A. Vampelt to take the ruling for the appellant.

In the absence of any showing that the appellant's interest was affected through the neglect of the court's appointee, this issue needs no lengthy discussion. The purpose of the appointment of Attorney Vampelt by the court was to note an exception to the ruling of the court on behalf of the appellant who was at the time absent from the trial, notwithstanding his acknowledgment of the service of the notice of assignment. The court's appointee was only required to except to the ruling of the court during the disposition of the appellant's motion to dismiss which the appointee did, as shown on sheet (1) of the minutes of court for the 17th day's session, March 2, 1984. The noting of exceptions was to lay the premise for an appeal in case the necessity arose, because the ruling on the motion was interlocutory and not a final judgment. Had the ruling on the motion been a final judgment, the appointee could have made an announcement of an appeal from the judgment on behalf of the appellant.

On the other hand, even though there was no harm done to appellant in the instant case, the court is of the opinion that the judge was in error to appoint a lawyer to take a ruling when Rule 7 of the Circuit Court Rules had been invoked.

According to the records in this case as found on sheet two of the 15th day's session, November 28, 1984, prior to the trial of the case, the mandate of the Supreme Court

ordering the 9th Judicial Circuit Court, Bong County, to resume jurisdiction over the case and proceed with the trial was ordered read and same was read. We must here mention that notices of assignments were sent out by the court for the hearing of the case, and that the parties, having duly acknowledged the said notices of assignment, it must have been assumed that all parties would have been present in court for the reading of the mandate before the trial commenced. We gather from the contention of appellant that the court should have sent out a special notice of assignment purposely for the reading of the Supreme Court's mandate, since he admits by implication that the mandate from the Supreme Court was in fact read. "Mere technicalities not affecting the substantial rights of the parties should not be allowed to defeat the ends of justice." *Dennis v. Gooding*, 10 LLR 123 (1949).

Further, in count six of the bill of exceptions, the appellant contends that the court below moved with abnormal speed because, according to the appellant, he having failed to appear for the hearing of the case at 2:00 p. m., the judge *sua sponte* called the case at 3:00 p.m., permitted the appellee's counsel to invoke Rule 7 of the Circuit Court Rules, and thereupon proceeded with the trial. Rule 7 of the Circuit Court Rules provides:

"The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial shall file a motion for continuance setting forth therein the legal reasons why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping with law and in its discretion. A failure to file a motion for continuance or to appear for trial after returns by the sheriff of a written assignment shall be sufficient indication of the party's abandonment of a defense in the said case in which instance the court may proceed to hear the plaintiffs side of the case and decide thereon or dismiss the case against the defendant and rule the plaintiff to cost according to the party failing to appear. In no instance might a case be continued beyond the term for which it is filed and set down for trial except however, that should the business of the court be such that a particular case is not reached during the session, such case or cases shall be continued as a matter of course. Clearing the trial docket by the disposition of cases shall be fore-most concern of the judge assigned to preside over term."

The records reveal that on the 27th day of November, 1984, a notice of assignment was issued by the court, served on the parties by the sheriffs office and returned served for the hearing of the case on the 28th of November, 1984. That assignment was duly acknowledged by appellant's counsel. Subsequently, on the same date, that

is to say on the 27th of November, 1984, counsel for the appellant wrote the court requesting the court to start the hearing of the case at 2:00 p.m. on November 28, 1984. According to the records also, neither appellant nor his counsel was present in court at the hour of 2:00 p.m. in keeping with the request of counsel for the appellant. The court then postponed the trial pending the arrival of the appellant and his counsel up to 3:00 p.m. At that time, the court became convinced that the appellant and his counsel had no intention of attending the trial. Consequently, counsel for the appellee applied to court for the invocation of Rule 7 of the Circuit Court Rules. That request was granted by the court, and the appellee was then ordered to take the stand and proceed with her side of the case.

In our opinion, the action of the trial judge was in conformity with our rules and procedure as quoted *supra* and therefore the contention of appellant is baseless. Count six of the bill of exceptions is therefore not sustained.

In counts 7, 8 and 9 of the bill of exceptions, the appellant contends that the witness who testified at the trial on behalf of the plaintiff did not testify as to the general damages awarded by the jury in favour of the appellee, and that even though the court was not requested by the appellee to charge the jury on general damages, the judge *sua sponte* charged the jury to award plaintiff general damages. During the trial in the court below the plaintiff, in addition to her own statement in support of her claim to the one lot, subject of the action of ejectment, also produced two witnesses who affirmed and confirmed plaintiff's statement as well as the allegations contained and set forth in the plaintiff's complaint regarding the wrongful withholding by the appellant of appellee's property. The jurors who are judges of facts and within whose province it is to decide upon the credibility of the evidence adduced at the trial, after due deliberation, returned a verdict in open court to the effect that the appellant was liable in the action of ejectment and that the appellee was entitled to the sum of Ten Thousand Dollars (\$10,000.00) as general damages.

Under our law, "special damages must be particularly alleged and affirmatively proved." *Kashoub v. Manly-Cole*, 15 LLR 554 (1964). On the other hand, the amount to be awarded as general damages is exclusively within the province of the trial jury.

Regarding the appellant's contention that the judge *sua sponte* charged the jury on the issue of general damages without any request from the appellee, this Court is of the opinion that this contention is not supported by the records, in that the prayers of the plaintiff's complaint in the court below shows the contrary. The prayer reads:

"Wherefore, and in view of the foregoing, plaintiff prays that judgment be rendered against the defendant that he be ousted, evicted and ejected from her land and that she be awarded damages sufficient to compensate her for the wrongful detention of her land and grant unto plaintiff all and further relief that the case may demand."

In light of the prayers of the appellee in this case, the Court is convinced that the trial judge was duty bound to charge the trial jury with respect to general damages in favour of appellee as prayed for in the complaint. Count nine of the bill of exceptions is hereby overruled.

In count 10 of the bill of exceptions, the appellant contends that the trial judge erred when he denied appellant's motion for a new trial since, according to the appellant, the court did not acquire legal jurisdiction over the subject matter because it did not assign the reading of the Supreme Court mandate prior to the hearing of the case. For the benefit of this opinion, we quote count 10 of appellant's bill of exceptions:

"Defendant/appellant, again appealing says that the judge grossly erred when he denied our motion for new trial to the verdict of the trial jury, in which motion we asserted that the court did not acquire legal jurisdiction over the subject matter and person when he did not make an assignment for the reading and enforcement of the mandate, when he commenced trial of the case. Plaintiff/ appellee did not deny this ground. "What is not denied is deemed admitted." *See* Motion for New Trial and Resistance."

From the wordings of count 10 of the bill of exceptions, we observe that the appellant's contention is a repetition of the issue of jurisdiction already passed upon in this opinion. According to the contention of the appellant, the court should have first assigned the reading of the Supreme Court mandate before the trial of the case was commenced. In our opinion, this does not constitute any of the grounds provided by statute for a new trial. The Civil Procedure Law, Rev. Code I: 26.4, relative to post trial motions, provide that:

"After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice. A motion under this section shall be made within four days after verdict. No extension of time shall be granted for making a motion under this section."

In count 12 of the bill of exceptions, the appellant contends that the final judgment

was contrary to the complaint and the evidence adduced at the trial, in that although there was no mention made of damages, special or general, yet the trial jury awarded Ten Thousand Dollars (\$10,000.00) in favour of the plaintiff as damages. For the benefit of this opinion, we here-under quote the relevant portions of the plaintiff's complaint:

"1. Plaintiff complains that she is the owner and entitled to the possession of (1) one town lot situated in the City of Gbarnga, Bong County, Republic of Liberia, as will more fully appear from copy of public land sale deed hereto attached to form a cogent part of this complaint.

2. Plaintiff complains that the defendant is illegally occupying her land and although she has made several demands for defendant to vacate her said parcel of land, he has refused so to do, to the great inconvenience and damage to the plaintiff."

The Civil Procedure Law, Rev. Code 1:62.3, under claim for damages, provide that "in a complaint in an action of ejectment, the plaintiff may demand damages for wrongful detention of real property as well as delivery of possession."

During the trial in the court below, the plaintiff produced witnesses who testified that the plaintiff was entitled to the one town lot described in the public land sale deed from the Republic of Liberia, as grantor, to plaintiff, as grantee. The said public land sale deed was proferted to plaintiffs complaint, testified to, identified by two witnesses, marked by the court, and subsequently admitted into evidence by the court to form a part of the records in the proceedings.

In the opinion of this Court, the complaint quoted *supra* is self-explanatory, in that aside from plaintiffs request therein to the court for judgment against the defendant to have said defendant ousted and ejected from the premises, the plaintiff also prayed the court that she be awarded damages sufficient to compensate her for the wrongful detention of her land. Moreover, the plaintiff having rested evidence, the empaneled jury who sat on the case during the trial, and who were the sole judges of the facts, after being charged, retired to their room of deliberations, and after due deliberations, returned a unanimous verdict in favour of the plaintiff, awarding the amount of Ten Thousand Dollars (\$10,000.00) as damages. Under these circumstances, this Court is of the opinion that the final judgment in this case was not contrary to the complaint and the evidence adduced at the trial as baselessly contended by appellant in count 12 of the bill of exceptions. Count 12 of the said bill of exceptions is therefore not sustained.

Under our statutes controlling action of ejectment, it is provided that "any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to the real property as well as the right to possession thereof is disputed. A widow may recover her dower in ejectment." Civil Procedure Law, Rev. Code 1:62.1.

In view of the above recited facts, and the controlling laws, it is the opinion of this Court that the judgment of the court below be, and the same is hereby affirmed and that a mandate be sent to the Ninth Judicial Circuit Court of Bong County to resume jurisdiction over the case and have its judgment enforced. Costs against the appellant. And it is hereby so ordered.

Judgment affirmed.